

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 SP-02 USIA-06 AID-05 EB-07 NSC-05

CIEP-01 TRSE-00 SS-15 STR-04 OMB-01 CEA-01 CIAE-00

COME-00 FRB-03 INR-07 NSAE-00 XMB-02 OPIC-03 LAB-04

SIL-01 IGA-02 EURE-00 L-03 H-02 PA-01 PRS-01 /089 W
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P R 071531Z APR 76

FM AMEMBASSY LISBON

TO SECSTATE WASHDC PRIORITY 6664

INFO AMEMBASSY BONN

USMISSION EC BRUSSELS

AMEMBASSY LONDON

AMCONSUL OPORTO

AMEMBASSY PARIS

USMISSION OECD PARIS

AMCONSUL PONTA DELGADA

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E.O. 11652: N/A

TAGS: EINV, PO

SUBJECT: FOREIGN INVESTMENT CODE

REF: (A) LISBON 0216, (B) STATE 21959 (NOTAL), (C) LISBON 722 (NOTAL)

SUMMARY: LONG-AWAITED FOREIGN INVESTMENT CODE INCORPORATES
NUMBER OF CHANGES WHICH RESPOND TO MOST PRINCIPAL OBJECTIONS
OF PRIVATE SECTOR TO EARLIER DRAFTS. LIMIT ON REINVESTMENT
HAS BEEN ELIMINATED. LIMITS ON TRANSFERS HAVE BEEN MADE
MUCH LESS RIGID. ACCESS TO MEDIUM-TERM INTERNAL CREDIT HAS BEEN
INCREASED. RIGID LIMITS ON FOREIGN PERSONNEL AND REQUIREMENT
THAT THEY ALL BE REPLACED EVENTUALLY BY PORTUGUESE HAVE BEEN
DELETED. GOP WILL STUDY POSSIBILITY OF JOINING ICSID CON-
VENTION. CODE IS THUS CONSIDERABLE IMPROVEMENT OVER EARLIER
DRAFT VERSIONS. END SUMMARY.

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1. LONG-AWAITED FOREIGN INVESTMENT CODE WAS FINALLY PROMULGATED ON APRIL 6, 1976, AS DECREE/LAW 239/76. COPY OF PORTUGUESE TEXT AND UNOFFICIAL ENGLISH TRANSLATION BEING SENT UNDER COVER OF AIRGRAM. FOLLOWING ARE SIGNIFICANT CHANGES FROM LAST AVAILABLE DRAFT DESCRIBED IN REFTEL (A), KEYED TO PARAGRAPHS IN THAT REFTEL:

1. PREAMBLE: IT NOW STATES THAT GOP WILL STUDY POSSIBILITY OF JOINING ICSID CONVENTION.

2. AUTHORIZATIONS: C. (2) PROVISION THAT CONTRACTUAL INVESTMENTS ARE ELIGIBLE FOR ADDITIONAL INCENTIVES AND SPECIAL CONDITIONS HAS BEEN DELETED.

E. SECTORS BARRED TO NEW FOREIGN INVESTMENT HAVE BEEN MORE SOLIDLY DEMARCATED BY DELETION OF CATCH-ALL "AND OTHER SECTORS OF NATIONAL INTEREST EXPRESSLY DEFINED BY GOVERNMENT DECREE".

F. LIMIT ON REINVESTMENT HAS BEEN DELETED.

3. GUARANTEES:

C. AND E. THE WHOLE THRUST OF SECTIONS WHICH RESTRICT ANNUAL TRANSFERS OF DIVIDENDS/PROFITS AND PROCEEDS OF SALE/LIQUIDATION OF INVESTMENT HAS BEEN CHANGED. THE FORMER ABSOLUTE LIMITS ARE NOW THE LEVELS TO WHICH GOP WILL GUARANTEE TRANSFERS, WITH TRANSFERS ABOVE THESE LEVELS TO BE CONSIDERED IN LIGHT OF BALANCE OF PAYMENTS SITUATION, ETC. (PARA . 4, REFTEL (A)).

D. ALL REFERENCE TO TRANSFERS FOR PAYMENT OF FOREIGN LOANS HAS BEEN DELETED.

G. ACCESS TO MEDIUM-TERM INTERNAL CREDIT HAS BEEN INCREASED. FIRMS WITH 25-50 PERCENT FOREIGN PARTICIPATION CAN OBTAIN CREDIT UP TO 70 PERCENT OF CAPITAL AND RESERVES, LESS ACCUMULATED PROFITS. THOSE WITH MORE THAN 50 PERCENT FOREIGN OWNERSHIP CAN GET CREDIT UP TO 50 PERCENT OF CAPITAL AND RESERVES, LESS ACCUMULATED LOSSES LIMITED OFFICIAL USE

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(SIC).

5. FOREIGN PERSONNEL:

A. THERE IS NO LONGER ANY REQUIREMENT THAT ALL FOREIGN PERSONNEL BE REPLACED BY PORTUGUESE. PERSONNEL PLAN SUBMITTED BY FIRM NEED PROVIDE ONLY FOR "PROGRESSIVE FILLING OF A NUMBER OF POSITIONS CONSIDERED ADEQUATE".

B. PROVISIO THAT GOP WILL ESTABLISH COMPANY LIMIT
ON FOREIGN PERSONNEL HAS BEEN DELETED.

6. TRANSFERS OF TECHNOLOGY:

C. TWO MORE CONDITIONS HAVE BEEN ADDED TO LIST
OF THOSE NOT GENERALLY PERMITTED IN CONTRACTS. THESE AD-
DITIONS PROHIBIT CLAUSES WHICH WOULD RESTRICT MARKETS OR
LIMIT DISTRIBUTION CHANNELS.

2. COMMENT: A. PROMULGATED CODE REPRESENTS CONSIDERABLE
IMPROVEMENT OVER DRAFT VERSIONS. GOP HAS OBVIOUSLY LISTENED
AND RESPONDED TO MOST, IF NOT ALL, OF PRIVATE SECTOR'S
PRINCIPAL COMPLAINTS (PARA. 5, REFTEL C). WHILE REMITTANCES
ARE STILL SUBJECT TO ANNUAL LIMITS, THESE ARE NO LONGER
RIGID. EASING OF LIMITATION ON FOREIGN PERSONNEL IS
PARTICULARLY NOTEWORTHY. SEVERAL PROBLEM AREAS REMAIN,
BUT DOCUMENT IS CLEAR SIGN OF IMPROVED GOP ATTITUDE TOWARD
FOREIGN INVESTMENT.
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